

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

TYLER C. LEARY,)
)
Plaintiff,)
)
v.) 2:22-cv-00256-JDL
)
YORK COUNTY JAIL,)
)
Defendant.)

**ORDER ACCEPTING THE RECOMMENDED DECISION OF THE
MAGISTRATE JUDGE**

Tyler C. Leary, who is proceeding pro se, brought this action in August 2022 against the York County Jail (ECF No. 1). In his Complaint, Leary asserts that nurses and a corrections officer at the York County Jail (“the Jail”) were deliberately indifferent to his medical needs, which resulted in him needing emergency surgery and later developing a MRSA infection.¹

On November 3, 2022, the Jail filed a Motion to Dismiss (ECF No. 12). The Jail argues, among other things, that (1) York County cannot be held liable for the actions of its employees or contractors under a theory of *respondeat superior* and (2) Leary has not shown that York County has an unconstitutional policy or custom that caused his injury, so there is no basis for imposing municipal liability.

United States Magistrate Judge John C. Nivison filed his Recommended Decision on the Motion to Dismiss with the Court on March 9, 2023 (ECF No. 18),

¹ Leary also filed an Application to Proceed Without Prepayment of Fees (ECF No. 2), which was granted (ECF No. 4), and included in his Complaint a request for counsel to be appointed (ECF Nos. 1, 3), which was denied (ECF No. 5).

pursuant to 28 U.S.C.A. § 636(b)(1)(B) (West 2022) and Fed. R. Civ. P. 72(b). The Magistrate Judge recommends that the Jail's Motion to Dismiss be granted and the Jail be dismissed from the case, but that Leary should be permitted to "amend his [C]omplaint to allege an Eighth Amendment deliberate indifference claim against the nurses and corrections officer he references in the [C]omplaint." ECF No. 18 at 12. The time within which to file objections has expired, and no objections have been filed.² The Magistrate Judge provided notice that a party's failure to object would waive the right to *de novo* review and appeal.

Notwithstanding Leary's failure to object, I have reviewed and considered the Recommended Decision, together with the entire record, and I have made a *de novo* determination of all matters adjudicated by the Magistrate Judge. I concur with the recommendations of the Magistrate Judge for the reasons set forth in his Recommended Decision and determine that no further proceeding is necessary.

It is therefore **ORDERED** that the Recommended Decision (ECF No. 18) of the Magistrate Judge is hereby **ACCEPTED**. The Jail's Motion to Dismiss (ECF No. 12) is **GRANTED**, and the Jail is dismissed from this action. Within 30 days of the issuance of this order, Leary may file an amended version of his Complaint that names as defendants the individuals cited in his original Complaint instead of the Jail.

² On March 23, 2023, Leary filed a letter expressing concerns about how to proceed in light of the Magistrate Judge's Recommended Decision (ECF No. 19). Leary's filing will be treated as a Motion for Clarification, not an objection, and is referred to the Magistrate Judge for consideration.

SO ORDERED.

Dated this 14th day of April, 2023.

/s/ Jon D. Levy
CHIEF U.S. DISTRICT JUDGE